

The Honorable Barbara J. Rothstein

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

ALVIN HEGGE, et al.,

Plaintiffs,

v.

JAY INSLEE, et al.,

Defendants.

Civil Action No. 3:20-cv-06170-BJR-MLP

ORDER ADOPTING REPORT AND  
RECOMMENDATION

**I. INTRODUCTION**

Before the Court is the Report and Recommendation (“R&R”) of Magistrate Judge Michelle L. Peterson. The R&R recommends that all claims except for those of plaintiff Alvin Hegge be dismissed for failure to prosecute. The R&R further recommends allowing plaintiff Hegge’s claims to proceed, provided his complaint is amended to reflect only the claims pertinent to him.

Having reviewed the R&R, the objections thereto, the relevant legal authority, and the record of the case, the Court will adopt the R&R.

**II. BACKGROUND**

Plaintiffs are current and former prisoners at Stafford Creek Correctional Center (“SCCC”)

1 in Aberdeen, Washington. Dkt. 21 at 1. Plaintiffs filed a civil rights action under 42 U.S.C. §§  
2 1983, 1985, and 1986, alleging that the conditions of their confinement at SCCC violated their  
3 constitutional rights. Dkt. 21 at 3. The complaint alleges the use of an unsanitary and toxic  
4 kitchenware cleaning process, deliberate indifference of SCCC staff to Plaintiffs' safety during the  
5 COVID-19 pandemic, and retaliation for their attempts to pursue legal action. Dkt. 21 at 3-4.

6 Plaintiffs sought to certify this action as a class action under Fed. R. Civ. P. 23(a), with all  
7 litigants proceeding *pro se* and plaintiff Hegge serving as the class representative.<sup>1</sup> Dkt. 1 at 4-5,  
8 29-30. Defendants in this case include Governor Jay Inslee, Attorney General Robert Ferguson,  
9 various other state and local officials, and members of the SCCC staff. *Id.* at 1. Plaintiffs also  
10 claim that Magistrate Judge J. Richard Creatura and Deputy Clerk Tyler Campbell failed to prevent  
11 the wrongs of the above-listed defendants by returning a check for the filing fee sent by plaintiff  
12 Hegge. Dkt. 21 at 3-4.

14 On February 22, 2021, Magistrate Judge Peterson issued an order to show cause directing  
15 Plaintiffs to demonstrate why all plaintiffs except for plaintiff Hegge should not be dismissed for  
16 failure to prosecute based on their lack of individual participation in the case. Dkt. 16. Among  
17 other things, the order instructed the putative plaintiffs to file a signed response indicating that  
18 they wished to participate in this action. *Id.* at 8. When no plaintiff other than plaintiff Hegge  
19 responded, Magistrate Judge Peterson issued an R&R recommending that the putative plaintiffs  
20 be dismissed without prejudice for failure to prosecute. Dkt. 21 at 7. Plaintiff Hegge filed  
21 objections to the R&R on July 7, 2021. Dkt. 26.  
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<sup>1</sup> The 18 prisoners plaintiff Hegge seeks to represent are referred to as the "putative plaintiffs" in this order.

### III. DISCUSSION

When a party properly files specific written objections to an R&R, the district court reviews the Magistrate Judge's findings *de novo*. *United States v. Raddatz*, 447 U.S. 667, 673 (1980); Fed. R. Civ. P. 72(b). The Court may accept, reject, or modify, in whole or in part, the findings and recommendations made by the Magistrate Judge. *Id.* at 673-74. *Pro se* filings are held to a "less stringent standard than formal pleadings drafted by lawyers" and are thus liberally construed. *Erickson v. Pardus*, 551 U.S. 89, 94 (2007) (quoting *Estelle v. Gamble*, 429 U.S. 97, 106 (1976)).

The issue before the Court is whether this case can be maintained as a class or joint action or if all plaintiffs except plaintiff Hegge should be dismissed. Magistrate Judge Peterson's order to show cause noted that Plaintiffs were improperly seeking to proceed as a class under Federal Rule of Civil Procedure 23(c), with plaintiff Hegge serving as representative. Dkt. 16 at 3. Magistrate Judge Peterson then analyzed whether the putative plaintiffs could be joined under Rule 20 and found that, "though there may be common issues of fact underlying some of the claims, Plaintiffs' individual claims will also involve independent factual allegations which would require separate and distinct evidence, evaluations, and analyses." *Id.* at 5. Magistrate Judge Peterson further stated that, even if joinder were proper, all Plaintiffs would need to read, approve, and sign each joint filing—a requirement that presents numerous logistical problems for prisoners and with which Plaintiffs have not complied. *Id.* at 4. In her R&R, Magistrate Judge Peterson reiterated these deficiencies and emphasized that none of the plaintiffs aside from plaintiff Hegge had responded to the order to show cause. *See* Dkt. 21.

As an initial matter, Magistrate Judge Peterson is correct that Plaintiffs cannot proceed as a class and plaintiff Hegge cannot serve as representative or formal legal counsel for his fellow

1 prisoners.<sup>2</sup> *See Russell v. United States*, 308 F.2d 98 (9th Cir. 1962); *Oxendine v. Williams*, 509  
 2 F.2d 1405, 1407 (4th Cir. 1975); *see also Abel v. Alameda Cty.*, 2007 WL 3022252, at \*1 (N.D.  
 3 Cal. Oct. 13, 2007) (“Pro se prisoner plaintiffs may not bring class actions.”).

4 Furthermore, as Magistrate Judge Peterson noted, “[b]ecause [pro se] [p]laintiffs cannot  
 5 represent others’ legal interests . . . , *all* [Plaintiffs] must sign the complaint and any . . . joint  
 6 filings.” Dkt. 16 at 4 (emphasis in original) (citing Fed. R. Civ. P. 11). Plaintiffs have not done  
 7 so. The response to the order to show cause was signed only by plaintiff Hegge and thus cannot  
 8 serve as a joint filing. Dkt. 20. No other plaintiff filed a separate response, despite Magistrate  
 9 Judge Peterson’s order explicitly warning them that if they did not respond, it would represent a  
 10 failure to prosecute. Dkt. 16 at 8.

12 Additionally, plaintiff Hegge asserts that the Court lacked jurisdiction to dismiss any  
 13 parties from this action because service had not been ordered on Defendants. *See, e.g.*, Dkt. 26  
 14 at 4-8. This assertion is groundless. The complaint names nearly 50 Defendants, including  
 15 Governor Inslee and Magistrate Judge Creatura. Dkt. 1 at 1-2. The complaint fails to explain  
 16 who many of the other defendants are, let alone describe the role they played in the alleged  
 17 constitutional violations. *See id.* at 2.

19 The Prison Litigation Reform Act of 1996 (“PLRA”) requires the Court to screen  
 20 complaints brought by prisoners against a government entity, officer, or employee. 28 U.S.C. §  
 21 1915(a); *see Jones v. Dep’t of Corrs.*, No. C21-1334-BJR-SKV, (W.D. Wash. Nov. 2, 2021).

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 25 <sup>2</sup> Plaintiff Hegge’s argument that “Magistrate Peterson is attempting to confuse a ‘class action’ under [Rule] 23(c) which requires appointment of counsel, and [Rule] 23(a) [which] does not require representation on behalf of other plaintiff(s), but only a joint effort in the litigation” is unsupported and inaccurate. Dkt. 26 at 20.

1 Courts must dismiss any complaint if it “(1) is frivolous, malicious, or fails to state a claim upon  
2 which relief may be granted; or (2) seeks monetary relief from a defendant who is immune from  
3 such relief.” 28 U.S.C. § 1915A(b); 28 U.S.C. § 1915(e)(2); *see Jones*, No. C21-1334-BJR-SKV,  
4 at \*4. Rule 8 of the Federal Rules of Civil Procedure requires that a complaint give a defendant  
5 sufficient notice of the claim and the grounds upon which it rests. *See Conley v. Gibson*, 355  
6 U.S. 41, 47 (1957).

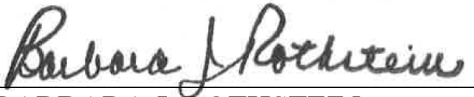
7 Plaintiff Hegge’s complaint does not meet the Rule 8 standard. Before service is ordered,  
8 plaintiff Hegge must either amend his complaint to include specific allegations against each  
9 defendant or remove defendants that have no clear connection to the conduct alleged in the  
10 complaint.  
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12 In summary, the Court adopts the R&R’s recommendation that all plaintiffs except for  
13 plaintiff Hegge be dismissed without prejudice for failure to prosecute. Plaintiff Hegge’s action  
14 may proceed, but he must amend his complaint to reflect only his individual allegations and to  
15 include specific allegations against those defendants against whom he wants to proceed.  
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#### 17 IV. CONCLUSION

18 For the foregoing reasons, the Court hereby adopts the R&R (Dkt. 21). All plaintiffs except  
19 Alvin Hegge are dismissed without prejudice. If any of these plaintiffs wish to pursue their claims,  
20 they may do so in separate, individual actions. Plaintiff Hegge is ordered to amend his complaint  
21 as described herein no later than 30 days from the date of this order.

22 DATED this 7th day of February, 2022.

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24 BARBARA J. ROTHSTEIN  
25 UNITED STATES DISTRICT JUDGE